IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS TEXARKANA DIVISION

LEO PATRICK COLLINS, #15509-078 §

VS.
§ CIVIL ACTION NO. 5:12ev79

CHARLIE WALKER, ET AL. §

ORDER OF DISMISSAL

Plaintiff Leo Patrick Collins, an inmate confined at F.C.I. Talladega, proceeding *pro se*, filed the above-styled and numbered civil rights lawsuit concerning the facts underlying his conviction. The complaint was referred to United States Magistrate Judge Caroline M. Craven, who issued a Report and Recommendation concluding that the cause of action should be dismissed because Plaintiff failed to comply with an order to file an amended complaint showing that his lawsuit was not barred by *Heck v. Hunphrey*, 512 U.S. 477 (1994), and an order to pay an initial partial filing fee of \$21.18.

The Plaintiff responded by filing a motion for extension of time (docket entry #8), which is construed as objections. He indicated that he wants the Court to postpone action on his lawsuit until he can satisfy *Heck*. He added that he is willing to pay the filing fee while he is getting the criminal case resolved. The Supreme Court held in *Heck*, however, that a civil rights litigant does not have a "cause of action under § 1983 unless and until the conviction or sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus." *Id.* at 489. Plaintiff does not have a basis for a cause of action at this time because he has not satisfied the requirements of *Heck*. He may file a lawsuit only when *Heck* is satisfied.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Plaintiff to the Report, the Court is of the

the Plaintiff are without merit. Therefore the findings and conclusions of the Magistrate Judge are

opinion that the findings and conclusions of the Magistrate Judge are correct and the objections of

adopted as the findings and conclusions of the Court. It is accordingly

ORDERED that the complaint is **DISMISSED** without prejudice. Fed. R. Civ. P. 41(b).

It is further

ORDERED that all motions not previously ruled on are hereby **DENIED**.

It is SO ORDERED.

SIGNED this 23rd day of October, 2012.

MICHAEL H. SCHNEIDER

UNITED STATES DISTRICT JUDGE

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